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HIGH COURT OF CHHATTISGAR AT BILASPUR

Cr. Appeal No. 1118/2003

Abdul Raies Khan @ Baba and three others

Vs.

State of Chhattisgarh

Judgment for consideration

Sd/-
Dilip Raosaheb Deshmukh
Judge

Hon'ble Shri Justice Fakhruddin

I agree
Acg. Chief Justice
5.10.2005

Post for: 6.10.2005

Sd/-
Fakhruddin
Judge

(63)

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Vs.

State of Chhattisgarh

Coram: Hon'ble Shri Justice Fakhdurrin, Acting Chief Justice
Hon'ble Shri Justice Dilip Raosaheb Deshmukh, J.

Shri Arun Kochar for the appellants.

Shri Ravindra Agrawal, P.L. for the State.

J U D G M E N T
(Delivered on .10.2005)

Per Dilip Raosaheb Deshmukh, J.

The appellants have assailed their conviction under Section 307 and 294 read with Section 34 I.P.C. in special case No. 107/2001 vide judgment dated 15.10.2003 delivered by Smt. Maitriae Mathur, Special Judge, Rajnandgaon whereby the appellants were sentenced to undergo imprisonment for life and to a fine of Rs.25,000/- each under Section 307 of the I.P.C. and in default to undergo rigorous imprisonment for one year each and under Section 294 of the I.P.C. to undergo rigorous imprisonment for three months.

2. The factural matrix lies within a narrow compass. Santosh Kumar was working as Clerk in Bharat Travels, near Bus stand, Rajnandgaon. The narrow margin between departure timings of

the buses of Ajmeri Travels and Indian Travels frequently gave rise to quarrel between the rival bus owners. On 10.06.2001 at about 2.15 P.M. appellant No.1-Abdul Raies Khan @ Baba armed with a sword and accompanied by other appellants No.2, 3 & 4 went to the office of Bharat Travels to fight with one Raies of Bharat Travels. They entered the office in an agitated mood and hurling abuses said "where is *Maadarchod* Raies". Santosh Meshram P.W.1 told the appellants that Raies was not available and they should not filthily abuse inside the office. Upon this, the already agitated appellants started quarrelling with Santosh Meshram P.W.1. The appellants No.2, 3 & 4 assaulted Santosh Meshram by firsts and kicks and held him whereupon appellant No.1-Abdul Raies Khan gave a single blow by the sword on the right side of frontal region of skull of Santosh Meshram. Blood started flowing from the wound. Abdul Raies Khan, appellant No.1, was about to assault Santosh Meshram for the second time by the sword but Santosh Meshram ducked. Afjal P.W.7 bus conductor, who was present in the office, saw the occurrence. A crowd gathered whereupon the appellants went away hurling filthy abuses "*Maadarchod Chamra* to Santosh Meshram.

3. Afjal P.W.7 brought Santosh Meshram to the District Hospital, Rajnandgaon where Dr. Lohia P.W.10 examined Santosh and found an incised wound 6" x ¼" x bone deep on the right frontal region of skull and an abrasion over right cheek ¼ cm x 1/4 cm. In the opinion of Dr. Lohia P.W.10, the incised wound was caused by hard and sharp object within 6 hours. Santosh

Meshram was admitted in male surgical ward for observation and treatment on 10.06.2001. He was discharged after a week.

4. Upon receiving information, Inspector V.S.Dwivedi P.W.11 reached the District Hospital and wrote *Dehati Nalishi* on the basis of narration by Santosh Meshram vide Ex.P.1. An offence under Section 307 & 294 read with Section 34 of the I.P.C. along with 3 (1) (x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act') was registered against the appellants vide Ex.P.5. On the basis of memorandum Ex.P.10 of appellant No.1-Abdul Raies Khan, one sword 20" in length having a handle of 5" in length and width of ¼" was seized from appellant No.1 vide Ex.P.11. On 16.6.2001 Dr. Lohia P.W.10 examined the sword and opined vide Ex.P.15 that the incised injury sustained by Santosh Meshram could have been inflicted by it. Upon opinion being sought regarding the nature of injury, Dr. Lohia P.W.10 opined on 14.7.2001 that the injury sustained by Santosh Meshram was simple. He also opined that the injury could have been fatal if not treated immediately, as per opinion given by Surgical Specialist. After completion of investigation, the appellants were prosecuted under Section 307 & 294 read with Section 34 of the I.P.C. and also under Section 3 (2) (v) of the Act.

5. The appellants abjured the guilt, pleaded innocence and examined Gopal D.W.1 and Kamal Gupta D.W.2 in defence. The prosecution examined as many as 11 witnesses. In defence, Gopal D.W.1 deposed that during the scuffle, Santosh had a fall and

sustained injury due to being hit by the table. Kamal Gupta D.W.2 testified that Santosh was abusing appellant No.1 filthily and no incidence as alleged by the prosecution took place.

6. The trial Judge negatived the defence version, relied upon the testimony of Santosh Meshram P.W.1 and Afjal P.W.7 which was corroborated by Kanhaiya P.W.6 and the testimony of Dr. Lohia P.W.10 and convicted the appellants under Section 307 and 294 read with Section 34 of the I.P.C. and sentenced them to imprisonment as aforesaid in paragraph-1. The appellants were acquitted of the charge under Section 3 (2) (v) of the Act.

7. Shri Kochar, learned counsel for the appellants, has argued that Santosh Meshram had sustained only one injury on the right frontal regional of skull which in the opinion of Dr. Lohia was a simple injury. The prosecution led no evidence to prove that the injury sustained by Santosh Meshram was either grievous or dangerous to life since the evidence of Dr. Lohia P.W.7 was completely silent on this point and the Surgical Specialist was not examined by the prosecution. He also contended that even as per the prosecution version, the appellants had gone to the office to quarrel with one Raies and not with Santosh Meshram. Appellant No.1-Abdul Raies Khan was alleged to have dealt only a single blow on the head of Santosh Meshram inflicting a simple injury and thereafter no further injury was inflicted by the appellant No.1. He thereby contended that the offence, if any, committed by the appellants would not travel beyond Section 324 read with Section 34 of the I.P.C. He contended that the appellants were in jail since

13.06.2001 to 14.6.2001 and thereafter since 15.10.2003 the appellants were undergoing sentence since almost two years. A compromise had been affected between the parties and an application (M.Cr.P.No.803/2004) dated 24.12.2003 and I.A.No.3153/2005 dated 27.09.2005 had been filed by Santosh Meshram. Therefore, in view of the compromise, a lenient approach should be adopted while awarding the sentence to the appellants. In support of his contentions, he placed reliance on *Badrilal vs. State of M.P.* reported in **2005 (7) SCC 55,** *Fajitiya & Ors. Vs. State of M.P.* reported in **1992 (3) Crimes 900**, *Sattan Sahani vs. State of Bihar & others* reported in **2003 (1) CCSC 295,** *Kailash Prasad Kanodia and another v. State of Bihar,* reported in **A.I.R.1980 SC 106,** *Ram Kumar Raghunath Prasad Goutam v. State of M.P.* reported in **2000 (2) M.P.L.J.** *Babu Singh and others v. State of Haryana* reported in **1995 Cr.L.J. 2630 SC** and *Mathai Vs. State of Kerala* reported in **2005 (1) Crimes 181 (SC).** On the other hand, Shri Ravindra Agrawal, P.L. for the State placing reliance on *State of Madhya Pradesh Vs. Saleem alias Chamaru and another* reported in **2005 Cri.L.J.3435** argued that the assault by a dangerous weapon to wit a sword on vital part i.e. the skull was sufficient to prove that the appellants intended to cause the death of Santosh Meshram, and therefore, the mere fact that the injury sustained by Santosh Meshram was a simple injury would not dilute the offence from Section 307 I.P.C. to Section 324 I.P.C.

8. We have heard the rival contentions at length and have also perused the record. Santosh Meshram P.W.1 has stated that all the four appellants came to the office and hurling filthy abuses to the owner quarrelled with him and beat him with hands and fists. He has further stated that while the appellants No.2, 3 & 4 caught hold of him, the appellant No.1-Abdul Raies Khan inflicted an injury on his head by a sword. He did not depose about any second attempt by Abdul Raies Khan, appellant No.1, to assault him by sword. It is pertinent to note that although Afjal P.W.7 has stated that all the appellants were assaulting Santosh Meshram by hands and fists, yet no such injury was found on the person of Santosh Meshram by Dr. Lohia P.W.10. It is also noteworthy that Afjal P.W.7 does not specify as to what filthy abuses were actually hurled by the appellants. Afjal P.W.7 also did not depose that the appellants No.2, 3 & 4 had caught hold of Santosh Meshram P.W.1 while being assaulted by the sword by appellant No.1. Kanhaiya P.W.6 only narrated that he saw the appellant No.1 coming out of the office of Bharat Travels with a sword while being accompanied by the appellants No.2, 3 & 4 but he also did not state as to the actual words spoken by the appellants or the actual abuses hurled by them. Santosh Meshram P.W.1, Kanhaiya P.W.6 and Afjal P.W.7 merely say that the appellants were hurling abuses of mother and sister. However, so far as the quarrel by all the appellants inside the office of Bharat Travels on the afternoon of the date of occurrence with Santosh Meshram P.W.1 and the assault by the sword on the head of Santosh Meshram P.W.1 by

the appellant No.1-Abdul Raies Khan is concerned, the testimony of Santosh Meshram P.W.1 and Afjal P.W.7 is reliable and consistent. The defence taken in the cross-examination of these witnesses is also consistent with such an inference that all the appellants had gone to the office of Bharat Travels and indulged in a quarrel with Santosh Meshram during which the appellant No.1-Abdul Raies Khan inflicted a single injury on the skull of Santosh Meshram P.W.1 by a sword.

9. The only residual question which requires our consideration is as to what offence was committed by the appellants. So far as the offence under Section 294 of the I.P.C. is concerned, the prosecution is required to establish first of all that the act committed by the appellant was obscene; secondly that it was committed in a public place and thirdly such act caused annoyance to others. The testimony of Kanhaiya P.W.6 and Afjal P.W.7 does not clearly depict the actual words spoken by the appellants while hurling abuses. The word "*Maadarchod*" is an abuse which is commonly used by ruffians during fights or quarrel and does not per se show obscenity. Such abuses are now colloquial expressions of anger and have little substance. The testimony of Santosh Kumar Meshram P.W.1, Afjal P.W.7 and Kanhaiya P.W.6 also does not show that the abuses hurled by the appellants had caused annoyance to them. Their evidence also shows that the abuses were hurled inside the office of the Bharat Travels which may not be a public place since no evidence to that effect has been led by the prosecution. Thus, none of the

ingredients to bring home the guilt under Section 294 of the I.P.C. have been established by the prosecution. In our considered opinion, the conviction of the appellants under Section 294 of the I.P.C. and the sentence awarded thereunder cannot be sustained under law.

10. So far as the assault on Santosh Maeshram P.W.1 by a sword by appellant No.1 is concerned, it is clear not only from the *Dehati Nalishi* Ex.P.1 but also by the testimony of Santosh Meshram P.W.1 that the appellants had gone to the office of Bharat Travels to indulge into a quarrel with one Raies and not with Santosh Meshram P.W.1. So far as the participation of the appellants No.2, 3 & 4 in assaulting Santosh Meshram P.W.1 is concerned, the testimony of Santosh Meshram that he was held by appellants No.2, 3 & 4 while the appellant No.1 assaulted him by the sword on the head is not reliable since Afjar P.W.7 who saw the occurrence did not corroborate Santosh Meshram P.W.1 on the point that the appellants No.2, 3 & 4 had held Santosh Meshram while he was assaulted with sword by appellant No.1-Abdul Raies Khan. Therefore, it cannot be inferred that appellants No.2, 3 & 4 had shared the common intention to attempt to commit murder of Santosh Meshram. So far as the appellant No.1 is concerned, a single blow was dealt by him on the right side of the frontal region of Santosh Meshram P.W.1. So far as the injury sustained by Santosh Meshram P.W.1 is concerned, the testimony of Dr. Lohia P.W.10 has been recorded in a very slipshod manner by the trial Judge who did not even think it necessary to record the findings

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and the opinion expressed by Dr. Lohia in the examination-in-chief. Thus, there is no evidence on record to establish that the injuries sustained by Santosh Meshram could have proved fatal, if not treated immediately. Even if we look into the opinion Ex.P.14 of Dr. Lohia, we are unable to comprehend as to how an injury which was a simple injury could be opined to be fatal if not treated immediately. In the opinion Ex.P.14, it appears that Dr. Lohia's opinion was based on the opinion given by the Surgical Specialist. However, neither the Surgical Specialist was examined by the prosecution nor the opinion was available on record. In cross-examination, Dr. Lohia P.W.10 has categorically stated that the injury sustained by Santosh Meshram was of a simple nature.

11. In *State of Madhya Pradesh Vs. Saleem alias Chamaru and another* reported in **2005 Cri.L.J.3435** cited by the learned counsel for the State, it was held by the Supreme Court that it is sufficient to justify a conviction under Section 307 I.P.C. if there was present an intent coupled with some overt act in execution thereof and it was not essential that bodily injury capable of causing death should have been inflicted. In *Vasant Vithu Jadhav v. State of Maharashtra* reported in **2004 Cri. L.J.1786** the Apex Court held as under:

> "To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The section makes a distinction

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> between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof"

12. We are therefore required to see whether in the facts and circumstances it can be inferred that the appellant No.1-Abdul Raies Khan intended to cause the death of Santosh Meshram. It would be worthwhile reiterating here that the appellants had not gone to the office of Bharat Travels to quarrel with Santosh Meshram. It is also not disputed that the appellant No.1-Abdul Raies Khan did not assault Santosh Meshram for a second time since Santosh Meshram P.W.1 has in his testimony not deposed about any second attempt of an assault with sword by the appellant No.1. The force with which the assault by the sword was made would also, in our considered opinion, be relevant in the facts and circumstances of this case. The testimony of Dr. Lohia P.W.7 does not say anything about the dimensions of the injury sustained by Abdul Raies Khan due to utter callousness on the part of the trial Judge. It only shows that the injury sustained by Santosh Meshram was a simple injury. The testimony of Santosh Meshram P.W.1 clearly shows that he was hospitalized only for a period of seven days in the District Hospital, Rajnandgaon. No

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evidence has been led by the prosecution to show that any fracture underneath the incised wound was sustained by him. Going by the medical report Ex.P.13 by any stretch of imagination, it can at the most be said that Santosh Meshram had sustained only a simple injury though by a dangerous weapon to wit a sword. Although Santosh Meshram had in the *Dehati Nalishi* stated that the appellant No.1-Abdul Raies Khan had attempted to assault him twice by the sword, yet in his evidence in the Court he did not make a statement to that effect. After inflicting the single injury, which in the opinion of Dr. Lohia, was a simple injury, the appellants left the place. Thus, there is absolutely no evidence on record which would go to show that the appellants had the intention of causing death of Santosh Meshram. The appellants had simply gone to the office to quarrel due to the simultaneous departure timings of the rival buses and a sudden quarrel had ensued during which the appellant No.1 had inflicted a simple injury on the head of Santosh Meshram by the sword.

13. In the facts and circumstances of the case and considering the manner in which the evidence was recorded by the trial Judge, we are of the considered opinion that the offence under Section 307 read with Section 34 of the I.P.C. is not brought home against the appellants. From the evidence on record and the manner in which all the appellants had gone to quarrel in the office of Bharat Travels during which the appellant No.1-Abdul Raies Khan inflicted a simple incised injury on the head of Santosh Meshram P.W.1, we have no hesitation in concluding that the offence

committed by the appellants does not travel beyond Section 324 read with Section 34 of the I.P.C.

13. In the result, the appeal is partly allowed. The conviction of the appellants under Section 294 of the I.P.C. and the sentence awarded thereunder by the trial Judge is set aside and the appellants are acquitted of the charge under Section 294 read with Section 34 of the I.P.C. The appellants are also acquitted of the charge under Section 307 read with Section 34 of the I.P.C. and the sentence awarded thereunder is also set aside. Instead the appellants are convicted under Section 324 read with Section 34 of the I.P.C. In *Badrilal vs. State of M.P.* reported in **2005 (7) SCC 55** upon a compromise between the parties, in a case under Section 307 of the I.P.C., the sentence of imprisonment was reduced to period already undergone i.e. about 14 months. In the present case, Santosh Meshram has filed a compromise application which is M.Cr.P.No.803/2004 dated 24.12.2003 and I.A.No.3153/2005 dated 27.09.2005. We take note of the fact that a compromise has been affected voluntarily between Santosh Meshram and the appellants. The appellants have undergone imprisonment from 13.06.2001 to 14.6.2001 and thereafter from 15.10.2003 till date. In the facts and circumstances of the case and in view of the compromise between the parties and also considering the nature of injury sustained by Santosh Meshram, awarding custodial sentence already undergone by the appellants would, in our opinion, meet the ends of justice. We order accordingly.

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14. If the appellants are not held in custody in any other case, they shall be set at liberty forthwith.

Sd/-
Ag. Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

06.10.2005

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